



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201327018**
Release Date: 7/5/2013
Date: February 20, 2013

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL Code:
501.03-00
501.03-20

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s):

Considering all the materials that you have submitted to date, you have not established that you will not operate for the private benefit of your creator and that no part of your net earnings will inure to a person having a personal and private interest in your activities. Therefore, you are not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code and sections 1.501(c)(3)-1(c)(2) and 1.501(c)(3)-1(d)(1) of the Treasury Regulations. Furthermore, you have represented that you transferred your assets and activities to another organization and have not resumed independent operation.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: May 18, 2010

Contact Person:

Identification Number:

Phone Number:

Fax Number:

Employer Identification Number:

UIL Code:

501.03-00

501.03-20

Dear :

We have considered your application for recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code ("the Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3). The basis for our conclusion is set forth below.

Facts

You were incorporated on December , 20 as a nonprofit corporation under the laws of the State of *****. Article III of your Articles of Incorporation state that your purposes are:

*To develop a spiritual path that is focused upon assisting individuals in achieving deepening levels of an authentic, direct spiritual experience of the ***** by collecting and systematizing the best of what mankind already knows of about this ***** and arranging that knowledge to maximize its effectiveness in helping individuals achieve an authentic, direct and ever deepening spiritual experience of It. . . . To integrate the best spiritual wisdom and methods of all previous, current and future authentic spiritual paths, derived from an unbroken lineage of mankind's most successful spiritual efforts to understand, commune with, and directly experience the *****.*

Article XIV states that in the event of your liquidation, dissolution, or winding up, your net assets will be disposed of "exclusively to or for the benefit of such organization or organizations as shall at the time qualify under Section 501(c)(3)"

Governance

Article VIII of your Articles state that your Board of Directors consists of between one and nine directors, as fixed by your Bylaws. Article XI provides that you shall have "such officers as may from time to time be prescribed by the bylaws." According to "Minutes of Action" dated December , 20 , ***** appointed ***** to be your sole director, president, secretary, and treasurer. ***** also adopted bylaws on this date, according to the "Minutes of Action." Your

Bylaws provide that your incorporator, *****, shall be your sole member, and that this member has the sole authority to appoint and remove directors.

On December 20, 20**** held a board meeting and decided that compensation would be established "in accordance and in parity with the current similar salaries and compensation found in similar non profit religious groups in the area that a particular **** organization or mission resides." Board minutes of January 20, 20**** show that **** set **** salary at \$**** per month in addition to a parsonage allowance "for the best rental rates that can be obtained wherever **** sets up new missions for the organization." The minutes explain that this compensation was "more than in line with salaries for ministers doing the work **** will be doing and who have comparable skills." ****'s salary was \$**** at the time you submitted your Form 1023.

On December 20, 20****, the sole director at the time, voted to add two directors, **** and ****. Upon the addition of these directors, you required their approval of ****'s compensation "based upon salary surveys for similar ministerial positions in this area." Both **** and the remaining two directors received compensation for serving in this capacity.

On the same date, **** voted as sole director to adopt a "Parsonage Resolution" that dedicated a portion of your **** (explained below) to **** as **** residence. Although **** does not remit any payment to you for this benefit, the value of the "parsonage," \$**** per month, is considered additional compensation to ****. You stated in the resolution that **** needs to be physically present on the **** to oversee ongoing **** maintenance and upgrades. There is no lease, employment agreement, or other agreement between you and ****.

On March 20, 20**** your Board minutes state that you created a co-directorship, hiring **** as a full-time employee, as co-director.

On November 20, 20**** you filed your 20**** Form 990-EZ, in which you listed **** as your sole officer, director, trustee, or key employee. **** is listed as your Executive Director, receiving no compensation.

Personnel and Membership

In a resolution dated December 20, 20**** appointed **** as your first. Subsequently, **** ordained **** as a ****. At the time, **** and **** were your co-directors and only two employees. You also paid several independent contractors for cleaning, repair work, accounting, and financial services. Since you were formed, you have ordained additional ****. In order to be ordained as a **** an individual must complete a self-directed course of study, involving various religious traditions and texts.

**** is your single legal and ecclesiastical member with voting authority and privileges. You offer other "memberships" without voting privileges. For example, you offer a free one-year annual membership on your website, and currently have approximately 4,000 such members. You also offer various donation-based annual supporting memberships, in exchange for contributions of \$ **** to \$ ****. The benefits of such membership include free use of your online

companion finder "*****" service, which is free for the first three months, then accessible for a \$ ***** per month suggested donation, discounts on various events and services, free access to online spiritual courses, and attendance at certain directors' and advisors' planning sessions. To date, you have very few, if any, paid memberships.

Related Organization

Prior to your founding, ***** established an organization named ***** , which the Internal Revenue Service has recognized as an organization described in section 501(c)(3) of the Code.

- Grant to *****

On September 20, 2007 your board minutes stated that ***** sought a grant of \$***** from you for obtaining a property to handle its security needs. The needs included conducting highly secure and confidential meetings, storing critical records and information, providing special mobile emergency backup security provisions for its website and data operations, and providing

The minutes state that many advantages to you in making the grant had "come to [y]our knowledge through a common director." These advantages included that you were looking for a lease at the time, which would ideally be to share a property to conduct your religious services. You stated that this would be cost efficient considering that as a new center you did not have an established local congregation. You stated as another advantage that you sought a lease under which leasehold improvements would result in an equity position for you and/or substantial reductions in lease payments. You also stated that you were not yet recognized as an exempt organization and therefore could not receive large donations.

Your September 20, 2007 minutes state that a property providing all that ***** needed had become available, and that because of *****'s 501(c)(3) status, \$***** of the purchase price would be donated. You also stated that if ***** were to close on the property soon, it would receive an additional \$***** discount, and that ***** was willing to co-lease unused parts of the property to you in a way that would benefit both organizations' budgets. Finally, you stated that ***** would provide you with an annual report on the use of this grant.

In a resolution dated September 20, 2007 ***** as sole director "resolved and decided to grant/donate \$***** to *****." The resolution states that ***** will co-lease and share property with you in a "fair and cost efficient" way. This resolution also states that that ***** disclosed ***** position on the board of ***** and stated that ***** received no salary from *****. ***** stated that ***** believed ***** could keep ***** roles completely separate, but that being a director of both could "bring many benefits to both organizations in the form of cost cutting, non duplicative efforts and other mutual benefits that would not be easily discoverable had ***** not had a good working knowledge of the purposes and capabilities of each organization."

- Lease Agreement with *****

***** purchased the ***** on which you conduct your activities and began leasing it to you pursuant to an agreement dated October 1, 2007 and signed by ***** for ***** as Director and for you as Director. Your lease agreement provides that ***** may have a permanent office and

storage space on the property, retain its emergency backup security provisions for *****'s website on the property, use all internet connectivity equipment on the property, and use the property for up to 24 conferences and/or meetings per year. If *****'s events conflict with yours, you will allow its use to take priority over yours. ***** conducts *****'s administrative activities on the ***** and occasionally provides which is pursuant to *****'s purposes. You agreed to perform repairs on the ***** immediately in exchange for six to nine months rent-free, and to pay all fees, state and federal property taxes, insurance and maintenance fees "amounting to about \$***** per month." The lease provided that you would begin remitting payment of \$10 per month to ***** no later than July 20____. Additionally, at the end of 20____, the value of all leasehold and security improvements made and insurance, tax, and fees paid by you would be credited to you as an equity percentage position in the property.

Your lease agreement with ***** also provides that if you fail to be recognized as exempt under section 501(c)(3) of the Code, your equity in the property will revert back in full to *****.

Your board minutes of December 20____ state that in the event you dissolve or fail to be recognized as a church or exempt organization, any and all of your assets will be donated to *****.

Financial Support

***** is the sole shareholder of ***** , a for-profit corporation. ***** is the majority owner of ***** , a for-profit entity, and ***** is the minority owner. In 20____ , ***** won a substantial judgment against the ***** for _____. In 20____ , ***** caused ***** to transfer to you the bulk of that judgment, \$*****. These funds have been your primary source of revenue. You have also received small amounts of contributions from the general public.

Subsequently, ***** took the position that ***** and ***** were simply ***** agents in transferring the \$***** to you, and that the transfer was a loan rather than a gift. Your Board subsequently "recharacterized" the contribution as a loan to you in a resolution dated August 20____. The minutes of that meeting state *****'s conflict of interest, but do not indicate that ***** was recused from final discussion or voting on the issue of whether to recharacterize the gift as a loan. You represent that ***** did not take a charitable contribution deduction for this transfer, but that ***** is amending ***** tax returns to reflect the recharacterization.

In a Promissory Note signed by your Board members on August 20____ but dated March 20____, you agreed to pay ***** \$***** on March 20____. The Note states that ***** , as the initial holder of the Note, intends to forgive the Note in its entirety on the date on which the later of the following two events occurs: (1) the Maker, ***** , is recognized by the IRS as an organization described in section 501(c)(3) of the Code; and (2) a final judgment from which no further appeal may be taken has been entered in ***** 's lawsuit against *****. You state that if a judgment is entered against ***** in this case, then ***** may use the Note to satisfy some or all of the judgment.

Activities

You were formed by *****, your executive director, to create a new , open source spirituality. You state that you were incorporated in particular to collect and use mankind's spiritual wisdom to help individuals expand their direct spiritual experience of the ***** and maximize their spiritual growth. You seek to help individuals (1) awaken to the truth, beauty, goodness, and reality of the *****, and (2) manifest their own unique highest truth, beauty and goodness, reality, gifts, and personality.

You do not refer to yourself as a "church," which you state is primarily due to the negative connotations of the word "church" to those who are disillusioned with their traditional church experience and seek a new form of spirituality. Instead, you refer to yourself as a "spiritual community." Your members may belong to other churches and spiritual communities.

Your Creed and Code of Conduct were created by your founder and president, *****. Your Creed reflects your spiritual beliefs that the core essence of all religions is the direct spiritual experience of the *****, but does not require members to adhere to those beliefs. You believe that the individual, with the assistance of ***** within him or her, is the final authority in determining spiritual truth. You believe that complete individual free will in spiritual matters is the . Therefore, you do not require members to subscribe to your Creed or Code of Conduct, and do not exercise traditional "spiritual authority" over your members.

However, you do expect the members of your spiritual community to live consistently with your Code of Conduct, which prohibits committing crimes or using physical violence. Persons who repeatedly and severely violate this Code may be locked out of your website and barred from your spiritual center until they cease such behavior. Members can reinstate their membership once their behavior has ceased and any damage has been repaired. You will only implement this discipline after fair investigation by your members and/or staff. To date, you have not taken such actions against any of your members.

Your primary activities are (1) maintaining a website that offers spiritual education resources for spiritual support and guidance, helps facilitate an online spiritual community, and offers a matchmaking service for singles; and (2) offering various programs and services to promote spirituality, including seminars, meditation services, and other open source spiritual events. You also provide shelter to

. Your website is the "center of [your] spiritual organization" and your "main international spiritual center for [your] global congregation." You state:

Because we were born as a global spiritual movement of the post-postmodern era, we are one of the first spiritual organizations to be delivering almost all of our services primarily on and from the Internet. Our physical spiritual centers and locations play a significantly lesser role.

Your website includes a member online prayer room, a meditation room worship chapel, a spiritual education lesson classroom, hundreds of "spiritually uplifting" news stories and articles, a discussion forum chat room, and other interactive tools to help educate and serve members' spiritual needs. The website also includes the *****, "one of the largest online spiritual wisdom collection and sharing data bases ever created." You believe that each television and computer

screen in the world is potentially a special doorway to and seat in your sacred cyber temple and the conduit for the ***** to be quickened within and with the individual through this electronic channel and the new spiritual information flowing through it. You have spent nearly three years and several hundred thousand dollars to build the website, which you continue to maintain and expand.

You opened your first "spiritual center," a ***** you lease from ***** , which is ***** at the end of a *****. You hold spiritual services, classes, and other events there. You refer to this ***** as your "*****," not as a "church." You hope to establish a physical spiritual center on every continent and in many major cities.

You state that you hold various services and events at your "*****," including:

- 1) : You hold these services, which last for two hours, generally once or twice each month. They begin with a spiritual meditation and time of gratitude. The then provides some form of spiritual education on Divinity and/or how to lead an effective spiritual life. Community members may share their spiritual successes and challenges. Some services conclude with a potluck dinner. Between 12 and 45 people attend these services, and several attend most of the services.
- 2) : You hold these services, which last for two hours, generally once or twice each month. A generally leads the salons and focuses on the dissemination of thought-provoking spiritual information, often through videos or films, followed by group discussion. Between two and 26 people attend, a few of whom attend most of them.
- 3) Morning Meditation: Each morning, four to five times per week, a leads a morning meditation service for your staff, with occasional guests. One or two people typically attend, sometimes as many as four.
- 4) Other Meditation Services: You conduct 30 to 40 minute "*****" services on Wednesday evenings and on Saturday mornings. You have not reported how many persons attend these services or how many persons attend these services regularly.
- 5) Sacramental Rites: preside over weddings, funerals, engagement ceremonies, events for singles, and other events. You have conducted one funeral, one engagement ritual, several singles' events, and ***** , spiritual celebration dedicated to spiritual renewal in which participants shared their spiritual experiences and successes with each other.
- 6) Spiritual Retreats: From time to time, you host one to two overnight guests on your "*****" for up to one week at a time. These individuals engage in spiritual reflection and meditation while on the retreats. You hope to organize larger spiritual retreats in the future.

You currently have five consistent and regular local spiritual service attendees who attend in person most of your monthly local services. These five include your four , three of whom are officers and directors, and one additional person.

You promote your events on your website and in occasional print advertisements and posters, but do not provide directions to the events on the website or advertisements. Rather, you provide contact information for persons to call or email to receive directions. The dates and times of these events are subject to change, because your "*****" is from time to time away from its ***** or is undergoing repairs. Also, your posters and advertisements stated that persons should notify you whether they will attend the events because of the "limited amount of space" on your "*****." The ***** holds about 16 people comfortably, although you state that you have "packed in" 24 people for a few services.

You have not yet offered programs for the religious instruction of the young, because the members of your spiritual community do not have young children. However, you hope to offer instruction to the young in the future. You state that you already have instruction for the young available on your website.

Your members and others who attend services and participate in your activities consider you to be a "spiritual community," but do not consider themselves to be members of a "church" or a "congregation."

LAW

Section 501(c)(3) of the Code describes a corporation organized and operated exclusively for charitable, educational, and other purposes, provided that no part of its net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the Income Tax Regulations states that the words "private shareholder or individual" in section 501 of the Code refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(a)(1) of the regulations states that to be described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be regarded as exempt if more than an insubstantial part of its activities further a nonexempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of "private shareholders or individuals."

Section 1.501(c)(3)-1(d)(1) of the regulations provides that an organization may be recognized as exempt under section 501(c)(3) of the Code if it is operated exclusively for one or more of the

following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Section 509(a)(1) of the Code provides that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A).

Section 170(b)(1)(A)(i) of the Code describes a church or convention or association of churches.

Rev. Rul. 69-266, 1969-1 C.B. 151, describes an organization formed and controlled by a doctor of medicine "hired" to conduct research programs, which consisted of examining and treating patients who were charged the prevailing fees for the services rendered. The ruling held that the organization was not exempt under section 501(c)(3) of the Code. The doctor transferred assets, including his medical practice, his home, and his automobile to the organization. In return for his services, the doctor received a small salary, a paid vacation, a pension plan, free health and life insurance, "scholarships" for his children, and the use of a personal residence and automobile. The ruling held that the organization was operated by its creator as an attempt to reduce his personal Federal income tax liability while still enjoying the benefits of his earnings. Thus, its primary function was to serve the private interest of its creator rather than a public interest.

In Rev. Rul. 81-94, 1981-1 C.B. 330¹, a nonprofit corporation was formed by a nurse who holds a "certificate of ordination" purchased from an organization selling such certificates and church charters. The nurse is the corporation's minister, director, and principal officer. The nurse maintains full-time employment with an unrelated employer.

Pursuant to a vow of poverty, the nurse transferred all of the nurse's assets, including the nurse's house and automobile, to the corporation. All salary payments received from the unrelated employer are deposited in a bank account maintained in the name of the corporation. In return, all of the nurse's existing liabilities were assumed by the corporation. The nurse is also provided with a full living allowance sufficient to maintain or improve the nurse's previous standard of living. The corporation permits the nurse to use the house and automobile for personal purposes.

This ruling states that the corporation serves as a vehicle for handling the nurse's personal financial transactions in the name of the nonprofit corporation. Thus, it operates to serve the personal and private interests of a designated individual rather than a public interest.

In Chapman v. Commissioner, 48 T.C. 358, 367-369 (1967) (Tannenwald, J. concurring), an interdenominational organization sent out evangelical teams to preach throughout the world and to establish small indigenous churches. These teams used dental services as the initial means by which they contacted prospective converts to Christianity. The court held that the

¹ Amplified by Rev. Rul. 89-74, 1989-1 C.B. 311, holding that "churches," such as those described in Rev. Rul. 81-94, are "tax shelters" for purposes of the substantial understatement penalty imposed by section 6661 of the Code (repealed by Pub. L. No. 101-239, § 7721(c)(2), 103 Stat. 2399; reenacted as section 6662).

organization was not a church for federal tax purposes, in part because "[a] sizable segment of its efforts to propagate the faith was performed on an individual basis." Judge Tannenwald explained that "the word 'church' implies that an otherwise qualified organization bring people together as the principal means of accomplishing its purpose. . . . The permissible purpose may be accomplished individually and privately . . . but it may not be accomplished in physical solitude." The organization's religious services and preaching, though functions normally associated with a church, were not its primary activities and therefore were not determinative of church status.

In Founding Church of Scientology v. U.S., 412 F.2d 1197 (Ct. Cl. 1969), the court stated that the payment of reasonable salaries by a tax-exempt organization does not result in the inurement of net earnings to the benefit of private individuals. However, an organization's net earnings may inure to the benefit of a private individual in ways other than actual payment of excessive salaries. The court determined that the church's founder and his family were entitled to personal use of the church's earnings in a number of ways. For example, the founder's wife received income for renting property owned by her to the church, yet it provided no evidence to show that the rent paid was reasonable or that the arrangement was beneficial to the church. The court held that the church could not prove it was entitled to exemption.

In Pusch v. Commissioner, 39 T.C.M. (CCH) 838 (1980), aff'd, 628 F.2d 1353 (5th Cir. 1980), an organization seeking recognition as a church was completely controlled by its minister, who considered himself to be self-ordained. The minister maintained and had complete control over the church's bank account. There were no restrictions on his usage of the funds in the account, so that he took whatever amount he decided he needed as living expenses over and above what he received as a salary. The minister drafted and signed a statement to the effect that in the event of dissolution, the church's funds would go to an exempt organization, at his complete discretion. The court found that the organization's earnings inured to the benefit of its minister; therefore, it could not qualify for exemption under section 501(c)(3) of the Code.

In Unitary Mission Church of Long Island v. Commissioner, 74 T.C. 507 (1980), the organization's cofounder and his wife were two of the three members of the organization's board of directors and controlled all financial decisions. The cofounder and his wife controlled the determination of their parsonage allowance, decisions regarding reimbursement for their own travel expenses, repairs and improvements to the parsonage located in their house, and the loans made to the cofounder's secular employer. Although control of financial decisions by those who appear to benefit personally does not necessarily indicate inurement, those factors coupled with little or no factors in the administrative record to indicate the reasonableness and appropriateness of the expenses were sufficient for a finding of inurement.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), a family formed an organization to operate as a subsidiary of a recognized church. The parents and daughter assigned their income and other properties to the organization conditioned upon, among other things, the organization's recognition as an exempt organization. The organization received most of its funds from these individuals. Regular religious services took place at the founding family's home and the organization's congregation consisted of three to twelve members. The court held that the organization served the private interests of the founding family. The founder had total control over the management of the organization's affairs and determined how its money

was spent. The organization also listed as its liabilities an automobile loan and debts for fuel for the founder's residence and other items. The court found that the organization existed largely to serve the private benefit of the founder.

In The Southern Church of Universal Brotherhood Assembled, Inc. v. Commissioner ("The Southern Church"), 74 T.C. 1223 (1980), an organization formed to operate a church did not qualify for exemption under section 501(c)(3) of the Code because it failed to serve a public purpose. There was "ample evidence" that the church served the private purposes of its minister, who, with his family, owned the residence that constituted the parsonage and the place where services were held. The church paid the utilities, fuel, maintenance, and repair expenses of the parsonage, as well as provided the minister's family with food, postage, stationery, pots and pans, dishes, glassware, sheets, blankets, towels, and curtains. In lieu of a parsonage allowance, the church's bylaws provided that the minister would have "occupancy and free use of the houses, grounds, glebes, books, paintings and other property made available by his separate congregation." The court also found that the church's minister donated virtually all of the church's income, the great majority of which was expended for the benefit of the minister and his family.

In Schoger Foundation v. Commissioner, 76 T.C. 380 (1981), an organization operating a religious retreat facility failed to qualify for exemption under section 501(c)(3) of the Code because it did not show that the retreat facility was operated exclusively for religious purposes. The court stated that to qualify for exemption, an organization must show that it engages primarily in activities that accomplish exempt purposes, that nonexempt activity is no more than an insubstantial part of its activities, and that none of its activities has more than an insubstantial nonexempt purpose. Because a single activity may be carried on for more than one purpose, an activity's substantial secondary purpose must also be exempt. Although the Schoger Foundation's lodge offered guests religious, recreational, and social activities, none were regularly scheduled or required. The court concluded that the organization did not operate primarily for an exempt religious purpose, and that the recreation and social activities at the lodge were more than incidental to a religious purpose.

In American Guidance Foundation, Inc. v. U.S., 490 F.Supp. 304 (D.D.C. 1980), affirmed in an unpublished opinion (D.C. Cir. 1981), the court recognized the IRS's 14-part test in determining whether a religious organization was a church. The 14 criteria are:

- 1) A distinct legal existence;
- 2) A recognized creed and form of worship;
- 3) A definite and distinct ecclesiastical government;
- 4) A formal code of doctrine and discipline;
- 5) A distinct religious history;
- 6) A membership not associated with any other church or denomination;
- 7) An organization of ordained ministers;
- 8) Ordained ministers selected after completing prescribed studies;
- 9) A literature of its own;
- 10) Established places of worship;
- 11) Regular congregations;
- 12) Regular religious services;

- 13) Sunday schools for religious instruction of the young; and
- 14) Schools for the preparation of its ministers.

The court stated that "while some of these [criteria] are relatively minor, others, *e.g.*, the existence of an established congregation served by an organized ministry, the provision of regular worship services and religious education for the young, and the dissemination of a doctrinal code, are of central importance."

In First Libertarian Church v. Commissioner, 74 T.C. 396 (1980), the organization's primary activities were to hold church meetings just before club meetings, sponsor a supper, conduct club meetings, and publish a club-church newsletter. The court stated that if the purpose of the organization's activities was exclusively religious, *i.e.*, not more than to an insubstantial degree nonreligious, then it would qualify for exemption. The organization failed to show that it had successfully segregated the clearly social and political aspects from the portion of the meetings designed to further its doctrine. Therefore, the court held that even assuming a religious quality to the organization's activities and purposes, it failed to demonstrate that its activities and purposes were not social or political to more than an insubstantial degree. For this reason, the organization failed to qualify for exemption.

In Brian Ruud International v. U.S., 733 F. Supp. 396 (D.D.C. 1989), the court held that an organization qualified as religious for purposes of section 501(c)(3) of the Code because its primary purpose and activities served to convey Mr. Ruud's religious teachings to others, and because there was no specific nonexempt purpose for which it was organized. The court noted, however, "[e]ven a bona fide religious organization which devotes substantial time to carrying out its religious purposes may still not satisfy the [organizational] test. The existence of any nonexempt purpose, if it is 'not insubstantial,' destroys the exemption."

In Spiritual Outreach Society v. Commissioner, 927 F.2d 335 (8th Cir. 1991), the court noted that the existence of an established congregation served by an organized ministry is of central importance in determining whether an organization constitutes a church for federal tax purposes. The court found that the organization did not have an established congregation because "nothing indicates that the participants considered [the organization] to be their church."

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the court determined that a nonprofit organization established by the Seventh Day Adventist Church to operate restaurants and health food stores to carry out its "health ministry" was not exempt under section 501(c)(3) as a religious organization. The court affirmed the Tax Court's finding that "Living Faith's religious purposes, although sincere, did not sufficiently mitigate the 'clear commercial purpose' of its operations." In so finding, the court stated that the Tax Court had not inquired into the merits of the organization's religion. Thus, the organization was not denied exemption because it espoused an illegitimate religious purpose, but rather because its activities were "motivated by a substantial nonexempt purpose"

In Foundation of Human Understanding v. U.S., 88 Fed. Cl. 203 (Fed. Cl. 2009) ("Foundation"), relying principally on the IRS's 14 criteria, the court concluded that the organization should not be classified as a "church" under section 170(b)(1)(A)(i) of the Code. The court stated, "[a]

group of followers . . . is not synonymous with a 'regular congregation.'" The court found that the organization did not provide "evidence as to the regularity, if any, with which its followers come together to practice." Because the case law "consistently concludes that '[w]hen bringing people together for worship is only an incidental part of the activities of a religious organization, those limited activities are insufficient to label the entire organization a church[,]'" the organization could not prove that it had a regular congregation.

The court in Foundation went on to note that the "associational test is a 'threshold' standard which religious organizations must satisfy in order to obtain church status." This test has also been called the "minimum" requirement to gain church status. See American Guidance Foundation, supra. The court found that the organization was a "'self-described non-membership organization' whose 'religious purposes were accomplished through the writing, publishing, and distribution of religious literature rather than through the regular assembly of a group of believers to worship together.'" Thus, in applying the "associational test," the court determined that:

The extent to which Foundation brings people together to worship is incidental to its main function which consists of a dissemination of its religious message through radio and internet broadcasts, coupled with written publications. "When bringing people together for worship is only an incidental part of the activities of a religious organization, those limited activities are insufficient to label the entire organization a church."

ANALYSIS

We have determined that you do not qualify for exemption as an organization described in section 501(c)(3) of the Code because: (A) you have failed to establish that you are organized and operated exclusively for religious purposes within the meaning of section 501(c)(3) of the Code, and (B) you violate the prohibition against inurement in section 501(c)(3) and section 1.501(c)(3)-1(c)(2) of the regulations. In any event, even if you otherwise qualified as an organization described in section 501(c)(3) of the Code, you would not be classified as a "church" within the meaning of sections 509(a)(1) and 170(b)(1)(A)(i).

A. You Are Not Organized and Operated Exclusively for Religious Purposes.

You have failed to establish that you are organized and operated exclusively for religious purposes within the meaning of section 1.501(c)(3)-1(d)(1)(i)(a) of the regulations. You have not established that your activities are primarily religious rather than social, recreational or personal. See First Libertarian Church, supra, and Schoger Foundation, supra. Similar to the organization described in Living Faith, Inc., supra, the merits of your religion are unable to mitigate your otherwise substantial social and recreational purposes. In addition, you are unlike the organization described in Brian Ruud International, supra, the primary activities of which furthered religious purposes.

B. You Violate the Prohibition Against Inurement.

For an organization to qualify as an one described in section 501(c)(3) of the Code, no part of its net earnings may inure in whole or in part to the benefit of private shareholders or individuals. See section 501(c)(3) of the Code and section 1.501(c)(3)-1(c)(2) of the regulations. The term "private shareholders or individuals" means persons having a personal and private interest in the activities of the organization. Section 1.501(a)-1(c). These persons are often referred to as "insiders."

Based on the following factors, we have determined that ***** is an "insider" for purposes of sections 1.501(a)-1(c) and 1.501(c)(3)-1(c)(2) of the regulations, and that you violate the inurement prohibition in section 1.501(c)(3)-1(c)(2) because your activities result in providing a personal and private benefit to ***** See Rev. Rul. 69-266, supra; Rev. Rul. 81-94, supra; Founding Church of Scientology, supra; Unitary Mission Church of Long Island, supra; Basic Bible Church, supra; The Southern Church, supra; and Pusch, supra.

1. When you were formed, ***** was your only member, director, and officer.
2. Although ***** has appointed other directors and you have had two to three directors in the past, ***** has always been the sole member with voting authority and control. ***** has power and authority to remove other directors at any time, in ***** sole discretion, and to appoint other directors. Accordingly, ***** has always had control of the organization, as did the minister in Pusch, supra.
3. ***** ordained ***** as "*****" and established ***** own salary, similar to the minister in Pusch, supra.
4. You claim that your entire three-member Board established salaries, but have not provided any documentation of Board consideration or establishment of such salaries.
5. You were established by ***** with the damages ***** won from ***** lawsuit against ***** . ***** donated substantially all of your assets, \$***** , through a limited liability company of which ***** was a minority owner and of which ***** , a corporation of which ***** was the sole shareholder, was the majority owner.
6. Subsequently, ***** re-characterized the \$***** donation as a "loan" evidenced by a Promissory Note that was retroactively dated to the date of the gift. The Promissory Note states that ***** intends to forgive the Note in its entirety on the date on which the later of the following two events occurs: (1) you are recognized by the IRS as an organization described in section 501(c)(3) of the Code; and (2) a final judgment from which no further appeal may be taken has been entered in ***** lawsuit against ***** . You stated that ***** may use the Note to fully or partially satisfy any judgments that may be entered against ***** in the ***** case. ***** acknowledged in the Board's August 20, 2006 minutes that ***** had a conflict of interest involving this transaction, but the minutes do not indicate that ***** was recused from voting or discussion. Your Board ratified *****'s decision to recharacterize the gift as a loan.
7. Your "*****" is a ***** owned by ***** , an organization controlled by ***** , and which uses the ***** for its own administrative purposes.

8. ***** lives on the ***** rent-free, as a "parsonage," and uses the organization's resources on the ***** for ***** personal purposes, as did the minister in The Southern Church, supra. Your full Board has never approved nor ratified this arrangement.
9. Your 2007 Form 990-EZ states that ***** is your only director, officer, and employee.

C. You Would Not be Classified as a "Church."

An organization that qualifies as an organization described in section 501(c)(3) of the Code is classified as a private foundation under section 509(a)(1) unless it meets one of the exceptions in that provision. One such exception is that the organization meets the requirements of a "church" under section 170(b)(1)(A)(i).

As explained previously, we have concluded that you do not qualify as an organization described in section 501(c)(3) of the Code. However, even if you did qualify, you would not be classified as a "church" within the meaning of section 170(b)(1)(A)(i). As explained below, although you meet several of the 14 criteria described in American Guidance Foundation, supra, including a distinct legal existence, a formal code or doctrine, a recognized creed, and literature of your own, these are not characteristics distinctive of a church, but are common to both churches and non-church religious organizations. Meeting these criteria is not sufficient to establish that you qualify as a "church" within the meaning of section 170(b)(1)(A)(i). In addition, you fail to meet the three most significant criteria: a regular congregation, regular worship services, and a membership not associated with any other church or denomination.

1. Regular congregation. The court in Spiritual Outreach Society, supra, stated that the existence of an established congregation is of central importance in determining whether an organization is a church. You do not have a regular congregation. You have several staff members that meet for worship meditation services, and they are often joined by others. However, such worship activities are not the staff members' primary activity. The staff spends most of their time working on the website and preparing for various "spiritual events" on the ***** that are attended by a diverse range of persons rather than a regular congregation. They also appear to spend substantial time maintaining and improving the ***** on which they meet and on which ***** lives.

You consider your website to be a sacred spiritual center and your online members to be a spiritual community, describing the site as your "main international spiritual center for [your] global congregation." However, persons who access your website to gain spiritual information do not regularly engage with each other in religious worship, and therefore do not constitute a congregation.

You have represented that your local mailing list is made up of over 500 recipients and your online mailing list is between 5,600 and 5,800 recipients. While you denote increased use of your "*****," its size limits the organization's ability to have such a large, regular congregation, as you have stated that the center can only comfortably hold 16 people.

Moreover, you acknowledge that you do not have a substantial or consistent congregation. You state that every new faith or religion starts with one, two, or three members. However, these numbers are not sufficient to meet this criterion as established by Foundation, supra, which states that there be a "regular assembly of a group of believers to worship together." You are similar to the organization in that case because the extent to which you bring people together to worship is incidental to your main function of operating a website. As the court stated in Foundation, the "associational test" is the minimum requirement for gaining church status.

2. Regular worship services. You hold regular worship meditation services several mornings per week and various other spiritual events on your "*****." The information you have provided regarding a majority of your spiritual events show that you require attendees to notify you if they will attend, which is not typical of a regular worship service. For the services not requiring notification, you have stated that on average about 15 to 30 percent of attendees regularly attend these services. These facts do not fully meet the definition of regular worship services.

You consider your website to be a sacred space and a temple in which members can worship. However, you have not presented evidence that cyber-members congregate for communal worship at a particular time or place on your website. Further, to the extent that such communal worship may take place online, you do not organize or direct it. Even if you did conduct worship services over the Internet, an organization which conducts worship services over the Internet cannot be classified as a church, according to Foundation.

3. A membership not associated with any other church or denomination. The non-exclusivity of faith is key to your doctrine of _____ faith. You state that "anyone from any other religion may be a member without having to give up their former religious affiliation." You do not ask proponents of particular faiths or members of particular churches to leave those faiths or churches, but rather to "integrate" their existing faiths with your new religion. You state, "[o]ur members enhance and may practice _____ Catholicism, Judaism, _____ Buddhism, or _____ Hinduism or any other form of _____ faith they may have come from IN ADDITION TO the new religious faith and meta-religious qualities of *****." An ***** -in-training states, "this course is giving me the opportunity to find a safe space to express the complexity of my own spiritual ideas that goes beyond my own particular religious tradition without having to dis-identify with it."

The court in Spiritual Outreach Society supra, determined that the organization did not have an established congregation because "nothing indicate[d] that the participants considered [the organization] to be their church." Therefore, this fact also prevents us from concluding that you have a regular congregation, as detailed above.

4. A formal code of doctrine and discipline. Your Creed and Code of Conduct were created by your founder and president, ***** Your Creed reflects your spiritual beliefs, including that the core essence of all religions is the direct spiritual experience of ***** but does not require members to adhere to those beliefs. You believe that the individual, with the assistance of ***** within him or her, is the final authority in determining spiritual truth. You believe that complete individual free will in spiritual matters is the

Therefore, you do not exercise traditional "spiritual authority" over your members.

However, you do expect the members of your spiritual community to live consistently within your Code of Conduct, which prohibits committing crimes or using physical violence. Persons who repeatedly and severely violate this Code may be locked out of your website and barred from your physical spiritual center until they cease such behavior. To date, you have not taken such actions against any members.

Members do not have to subscribe to your Creed or Code of Conduct, or sign any other creedal agreement. The only spiritual creedal requirement or expectation is that members be tolerant of other religious or spiritual expressions and that they seek to enhance their spiritual life through new transformative, direct spiritual experiences of *****. You also expect your doctrine to evolve with new developments in spiritual theology in the "not too distant future."

5. A recognized creed and form of worship. You have demonstrated that you have a place of worship with limited space, but this does not necessarily demonstrate a form of worship. Rather, the majority of your events are informational in nature, inviting a variety of speakers to the center to speak on a topic related to integrated spirituality. However, you do conduct several meditative services.
6. Definite and distinct ecclesiastical government. Your Board of Directors is currently comprised of one, self-appointed director, *****. Your director oversees your " who organize and lead spiritual events.

You stated in your Form 1023 that because of the nature of your beliefs, you have no final ecclesiastical authority within your structure. You believe that no one in a congregation has been specially or uniquely appointed by ***** and that no individual has an exclusive claim to the authority of divine leadership or special spiritual revelation. You look instead to the combined group spiritual wisdom of your membership and the existing spiritual validity tests of the existing spiritual heritage of mankind.

7. An organization of ordained ministers. You currently have four other prospective is in training. One
8. Ordained ministers selected after completing prescribed studies. You expect your candidates to undergo a program that is largely self-instructive, involving the reading of many spiritual books and essays that are available on your website.
9. Sunday schools for religious instruction of the young. You do not currently offer Sunday school or other programs for the religious instruction of the young, as most of your members and attendees are in their late 40s, 50s, and 60s and do not have any young children. However, you state that you hope to offer some instruction to the young in the future.
10. A distinct legal existence. You have a distinct legal existence.

11. A distinct religious history. You were formed in 20 and initially focused on the development of your website.
12. A literature of its own. Your staff prepare some articles that are featured on your website and you have a multitude of literature of your own available through your website.
13. Established places of worship. In Chapman, supra (), concurring), it was stated that religious purposes:

[M]ay be accomplished individually and privately in the sense that oral manifestation is not necessary, but it may not be accomplished in physical solitude. A man may, of course, pray alone, but, in such case, though his house may be a castle, it is not a church. Similarly, an organization engaged in an evangelical activity exclusively through the mails would not be a church.

You consider both your website and your "*****" to be established places of worship. However, most of the activities on both the website and ***** are not worship. Rather, the website is primarily for accessing various types of spiritual information and the spiritual center is used primarily for administrative activities and a residence. You also use the center for various spiritual events and services, some of which involve religious worship.

14. Schools for the preparation of ministers. Your officers and directors oversee the self-instruction of candidates. However, you do not own or operate any schools for the preparation of ministers.

Other factors that the IRS and courts have considered in determining whether an organization is a church include the following:

- Administration of the sacraments. You do not appear to administer sacraments such as baptism or communion.
- Celebration of life cycle events. You have conducted a funeral, a wedding, an engagement ceremony, and an ordination ceremony.
- Promotion of the organization's services and activities to the public. You have promoted your activities online and through various posters, mailings, and e-mail newsletters.
- Perception of church status by organization's participants. You define yourself to the public, through your website, as a "spiritual organization." Neither the public nor your members or staff consider you to be a "church." Nor do you identify yourself as a church, either publicly or internally to members or other staff.

See Spiritual Outreach Society, supra.

Therefore, although you meet several of the foregoing criteria, you fail to meet most of them, including the three most significant: a regular congregation, regular worship services, and a

membership not associated with any other church or denomination. As a result, even if you otherwise qualified as an organization described in section 501(c)(3) of the Code, you would not be classified as a "church" within the meaning of section 170(b)(1)(A)(i).

CONCLUSION

You do not qualify for exemption as an organization described in section 501(c)(3) of the Code because you are not organized and operated exclusively for religious purposes within the meaning of section 501(c)(3), and you violate the prohibition against inurement in section 501(c)(3) and section 1.501(c)(3)-1(c)(2) of the regulations. In any event, even if you otherwise qualified as an organization described in section 501(c)(3) of the Code, you would not be classified as a "church" within the meaning of section 170(b)(1)(A)(i).

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement to the person whose name and fax number are shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Rob Choi
Director, Exempt Organizations